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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 857 OF 2004
IN
SUIT NO. 2359 OF 2004

Vitanic Products Pvt. Ltd, .. Plaintiffs
vs.
M/s. Poona Pearls Breeders
Pvt. Ltd., .. Defendants.

Mr. Pankaj Das i/by Rajesh Datar
for the plaintiffs.
Mr. Sanjeev Rairkar for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 19th OCTOBER, 2005.

P.C.

. The present suit is filed by the plaintiff for the recovery of a sum of Rs. 3,79,400/-. The said claim arises out of the goods sold and delivered under the invoices annexed as Exhibit A to A-28. There is a balance confirmation dated 4.2.2003. The learned counsel for the defendant contends that the suit is not maintainable as a summary suit in respect of the goods sold and delivered under the invoices and delivery challans.

In my opinion, each of the invoice constitute a contract and thus there is a written contract under which the claim arises. The next contention raised is that the claim is barred by law of limitation. I am of the opinion that the said contention has no merit. The first invoice is dated 22.5.2002. There is acknowledgement of liability by letter dated 4.2.2003 which is at Exhibit B at page 42. The suit is filed on 29.7.2004. In that view of the matter, the suit claim is within time. The letter of acknowledgement of liability dated 4.2.2003 does not indicates admission of liability. Even in respect of the said contention there is no merit, The confirmation of balance obviously is for admitting the liability to pay. However, in view of the fact that the suit is also based on the goods sold and delivered as covered by the invoices, there is no merit in the present case. However with a view to give an opportunity to the defendant to defend the suit, I direct the defendant to deposit in this Court a sum of Rs. 3,75,000/- within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.